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CUMULATIVE SUPPLEMENT
TO
MISSISSIPPI CODE
1972 ANNOTATED

Issued September 2013

**CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2013 REGULAR SESSION
AND 1ST AND 2ND EXTRAORDINARY SESSIONS**

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

PUBLISHER'S FOREWORD

Statutes

The 2013 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2013 Regular Session and 1st and 2nd Extraordinary Sessions.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

- Southern Reporter, 3rd Series
- United States Supreme Court Reports
- Supreme Court Reporter
- United States Supreme Court Reports, Lawyers' Edition, 2nd Series
- Federal Reporter, 3rd Series
- Federal Supplement, 2nd Series
- Federal Rules Decisions
- Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

- American Law Reports, 6th Series
- American Law Reports, Federal 2nd
- Mississippi College Law Review
- Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2013 Regular Session and 1st and 2nd Extraordinary Sessions.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2013

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SCHEDULE OF NEW SECTIONS

Added in this Supplement

TITLE 85. DEBTOR-CREDITOR RELATIONSHIP

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QUALIFYING PROVIDERS OF BURN CARE LIEN FOR CAUSES OF ACTION

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ANNOTATED

VOLUME NINETEEN B

TITLE 85

DEBTOR-CREDITOR RELATIONSHIP

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CHAPTER 3

Exempt Property

§ 85-3-1. Property exempt from seizure under execution or attachment.

JUDICIAL DECISIONS

2. Exempt personal property generally.

In the event that the term “motor vehicles” was not clear and unambiguous so that the court should employ the canons of statutory construction to interpret the meaning of “motor vehicles” in Miss. Code Ann. § 85-3-1(a), the court found as follows: (1) in other Mississippi statutes, the ordinary use of “motor vehicles” included motorcycles, (2) the Mississippi Legislature used the term “motor vehicles” in § 85-3-1(a) without adding language to include some types of motor vehicles but not others, (3) the sections of the Mississippi Code that discussed motorcycles demonstrated that for the purposes of traffic regulation, conveyance, registration, and taxation, the Mississippi Legislature considered motorcycles to be a type of motor vehicles. Without indication to the contrary, there was no reason to pre-

sume that the Mississippi Legislature had any different intent with respect to its treatment of motorcycles under the Exemption Statute. In re Clemons, 441 B.R. 519 (Bankr. N.D. Miss. 2010).

Term “motor vehicles” is clear and unambiguous and should be given its plain meaning; furthermore, (i) the plain meaning of “motor vehicles” includes motorcycles, (ii) if the Mississippi Legislature had desired to narrow the types of “motor vehicles” affected by the Exemption Statute, Miss. Code Ann. § 85-3-1, it certainly knew how to add restricting language to accomplish that goal, and (iii) accordingly, motorcycles fall within the category “motor vehicles” and as such are a type of tangible personal property included in § 85-3-1. A debtor may, therefore, claim a motorcycle as exempt property pursuant to § 85-3-1. In re Clemons, 441 B.R. 519 (Bankr. N.D. Miss. 2010).

RESEARCH REFERENCES

ALR. Construction and Application of Exemption for Firearms under State Law. 46 A.L.R.6th 401. Purchase of Annuity by Debtor as Fraud on Creditors. 74 A.L.R.6th 549.

§ 85-3-4. Execution or attachment of wages, salaries or other compensation; limitations.

JUDICIAL DECISIONS

2. Obligee no longer has custody.

Under Miss. Ann. § 85-3-4(2)(a)(i), the trial court erred in ordering 55 percent, rather than 25 percent, withheld from a father's disposable income, because when

a judgment was awarded to the mother for past-due child support, she no longer had custody of the child. *Reasor v. Jordan*, 110 So. 3d 307 (Miss. 2013).

§ 85-3-21. Homestead exemption; land and buildings.

JUDICIAL DECISIONS

6. Rights of survivors.

16. Waiver.

6. Rights of survivors.

Trial court did not err in granting an executrix summary judgment and in determining that the claim of the Mississippi Division of Medicaid was not valid against a decedent's property because the decedent predeceased his children and a grandchild to whom he devised all of his property, and pursuant to the unambiguous language of Miss. Code Ann. §§ 85-3-21, 91-1-19, and 91-1-21, coupled with case law, the homestead, with its exemption, passed from the decedent to his children and grandchildren free of his debts; thus, Medicaid was not entitled to pursue a claim against the exempted property as it was not a part of the estate. *State v. Stinson (In re Estate of Darby)*, 68 So. 3d 702 (Miss. Ct. App. 2011), writ of certiorari denied by 69 So. 3d 767, 2011 Miss. LEXIS 419 (Miss. 2011).

16. Waiver.

Executrix did not waive the homestead exemption by entering into a contractual relationship with the Mississippi Division of Medicaid on behalf of a decedent because the record did not support the idea that the decedent had any knowledge of the benefits a homestead exemption provided, nor that he intentionally waived his right to the benefit of that exemption since the contract did not provide any information pertaining to, or even mention, the significance of any exemption; there was no evidence of the decedent's intent to waive any of his rights because by entering into the contract, the decedent merely acknowledged Medicaid as a creditor of his estate, which estate had no property against which Medicaid could recover. *State v. Stinson (In re Estate of Darby)*, 68 So. 3d 702 (Miss. Ct. App. 2011), writ of certiorari denied by 69 So. 3d 767, 2011 Miss. LEXIS 419 (Miss. 2011).

CHAPTER 5

Joint and Several Debtors

§ 85-5-7. Limitation of joint and several liability for damages caused by two or more persons; contribution between joint tortfeasors; determination of percentage of fault; liability of medical defendants for economic and noneconomic damages.

JUDICIAL DECISIONS

I. Under § 85-5-7.

5. Joint and several damages.
6. Miscellaneous.

I. Under § 85-5-7.

5. Joint and several damages.

Under Mississippi's Dram Shop Act, Miss. Code Ann. § 67-3-73(4) (2005), which required proof that a customer was served alcohol when he was visibly intoxicated, a casino was liable for damages from the customer's car accident as the expert of the wrongful-death heirs testified that the driver's blood alcohol content was high enough that trained personnel should have spotted the driver's intoxication. However, under Miss. Code Ann. § 85-5-7(3), which was in effect when the suit was filed, joint and several liability was limited to fifty percent of recoverable damages. *Robinson Prop. Group, Ltd. P'ship v. McCalman*, 51 So. 3d 946 (Miss. 2011).

In light of *Fontenot* and Miss. Code Ann. § 85-5-7(5), Mississippi law supports allocation of fault to immune parties, such as an employer in a non-vessel

the Longshore and Harbor Workers' Compensation Act, 33 U.S.C.S. § 901 et seq., claim. *Jowers v. Lincoln Elec. Co.*, 617 F.3d 346 (5th Cir. 2010).

6. Miscellaneous.

Grant of summary judgment in favor of the other driver in the passenger's negligence action for injuries that she received in a car accident was inappropriate because an oral surgeon's testimony was admissible; he testified that his opinion was based on his knowledge, skill, experience, training, and education as an orthopedic surgeon and his testimony was sufficient to establish the element of proximate cause and was admissible for the jury to consider in the apportionment of damages. The other driver, as the driver of the second car to hit the vehicle in which the passenger was riding, was responsible only for the amount of the passenger's damages that were based on his fault allocated by the jury in accord with Miss. Code Ann. § 85-5-7. *Lopez v. McClellan*, — So. 3d —, 2010 Miss. App. LEXIS 214 (Miss. Ct. App. Apr. 27, 2010), appeal dismissed by 2010 Miss. App. LEXIS 480 (Miss. Ct. App. Sept. 7, 2010).

CHAPTER 7

Liens

Lien on Amount Due Contractor	85-7-187
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MECHANICS AND STABLEKEEPERS

§ 85-7-101. Articles constructed, manufactured or repaired; lien for labor and materials.

JUDICIAL DECISIONS

- 1. In general.
- 7. Actions to enforce liens.

1. In general.

Mechanic's lien and storage lien statutes which were advanced by a party, who repaired and then stored an excavator, did not allow attorney's fees. *Caterpillar Fin. Servs. Corp. v. Burroughs Diesel, Inc.*, — So. 2d —, 2013 Miss. App. LEXIS 175 (Miss. Ct. App. Apr. 16, 2013).

7. Actions to enforce liens.

Repair company was not entitled to summary judgment on its mechanic's lien

claim under Miss. Code Ann. § 85-7-101, for the labor and material to repair an excavator, because there were genuine issues of material facts in dispute, as the reasonableness or necessity of the repairs was not addressed. *Caterpillar Fin. Servs. Corp. v. Burroughs Diesel, Inc.*, — So. 2d —, 2013 Miss. App. LEXIS 175 (Miss. Ct. App. Apr. 16, 2013).

LABORERS, MATERIALMEN, ARCHITECTS, SURVEYORS, ENGINEERS, WATER WELL DRILLERS AND CONTRACTORS

§ 85-7-141. Commencement of suit to enforce lien.

JUDICIAL DECISIONS

7. Limitations.

Dismissal of a suit seeking to enforce a construction lien was proper as: (1) the original complaint (OC) did not name the real party in interest under Miss. R. Civ. P. 17(a), the current owner (CO) of the building; (2) the prior owner had conveyed the property before the OC was filed; (3) the amended complaint (AC) was time-barred as it was not served on the CO

until after the Miss. Code Ann. § 85-7-141 limitations period expired; (4) due to the lack of timely service under Miss. R. Civ. P. 4(h), the AC did not relate back to the OC's filing under Miss. R. Civ. P. 15(c); and (5) the contractor did not show good cause for the delayed service. *Welch Roofing & Constr., Inc. v. Farina*, 99 So. 3d 274 (Miss. Ct. App. Oct. 16, 2012).

LIEN ON AMOUNT DUE CONTRACTOR

Sec.

85-7-185. Bond; provisions; right to intervene in action on bond.

Sec.

85-7-301. Definitions; lien on causes of action accruing to injured persons for uncompensated traumatic burn care [Repealed effective July 1, 2016].

85-7-303. Filing of verified statement; contents; notice [Repealed effective July 1, 2016].

85-7-305. Duties of chancery clerk; lien book [Repealed effective July 1, 2016].

85-7-307. Effect of covenant not to bring an action; action to enforce lien; affidavit of payment [Repealed effective July 1, 2016].

- 85-7-309. Applicability [Repealed effective July 1, 2016].
- 85-7-311. Effect of Sections 85-7-301 through 85-7-315 on settlement before entry into qualifying hospital [Repealed effective July 1, 2016].
- 85-7-313. No independent right of action to determine liability for injuries [Repealed effective July 1, 2016].
- 85-7-315. False affidavit required by Section 85-7-307 as perjury [Repealed effective July 1, 2016].
- 85-7-317. Repeal of Sections 85-7-301 through 85-7-315.

§ 85-7-185. Bond; provisions; right to intervene in action on bond.

When any contractor or subcontractor entering into a formal contract with any person, firm or corporation, for the construction of any building or work or the doing of any repairs, shall enter into a bond with such person, firm or corporation guaranteeing the faithful performance of such contract and containing such provisions and penalties as the parties thereto may insert therein, such bond shall also be subject to the additional obligations that such contractor or subcontractor shall promptly make payments to all persons furnishing labor or material or rental or lease equipment under said contract; and in the event such bond does not contain any such provisions for the payment of the claims of persons furnishing labor or material or rental or lease equipment under said contract, such bond shall nevertheless inure to the benefit of such person furnishing labor or material under said contract, the same as if such stipulation had been incorporated in said bond, and any such person who has furnished labor or materials or rental or lease equipment used therein for which payment has not been made shall have the right to intervene and be made a party to any action instituted on such bond, and to have his rights adjudicated in such action and judgment rendered thereon, subject, however, to the priority of the rights or claim for damages or otherwise, of the obligee. The bond herein provided for may be made by any surety company authorized to do business in the State of Mississippi. A subcontractor supplying labor or materials for the prosecution of work shall, upon request to the owner or contractor, be furnished with a true and correct copy of the bond.

SOURCES: Codes, Hemingway's 1921 Supp. § 2434b; 1930, § 2276; 1942, § 374; Laws, 1918, ch. 128; Laws, 2010, ch. 372, § 4; Laws, 2012, ch. 357, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment added the last sentence.

TOWING AND STORAGE OF MOTOR VEHICLES

§ 85-7-251. Sale of motor vehicle for towing and storage cost; notice requirement.**JUDICIAL DECISIONS****0.5. In general.**

Mechanic's lien and storage lien statutes which were advanced by a party, who repaired and then stored an excavator, did not allow attorney's fees. *Caterpillar Fin. Servs. Corp. v. Burroughs Diesel, Inc.*, — So. 2d —, 2013 Miss. App. LEXIS 175 (Miss. Ct. App. Apr. 16, 2013).

Summary judgment award for a lien against an excavator for storage costs was inappropriate because there was nothing

in the stipulation before the county court about storage costs. The affidavits and materials filed in support of the motion for summary judgment discussed storage costs, but did not satisfy the statutory requirements of Miss. Code Ann. § 85-7-251. *Caterpillar Fin. Servs. Corp. v. Burroughs Diesel, Inc.*, — So. 2d —, 2013 Miss. App. LEXIS 175 (Miss. Ct. App. Apr. 16, 2013).

QUALIFYING PROVIDERS OF BURN CARE LIEN FOR CAUSES OF ACTION**§ 85-7-301. Definitions; lien on causes of action accruing to injured persons for uncompensated traumatic burn care [Repealed effective July 1, 2016].**

(1) Except where the context otherwise requires in subsection (2) of this section, as used in Sections 85-7-301 through 85-7-315, the term:

(a) "Qualifying hospital" means any hospital designated as a burn center by the State Department of Health.

(b) "Qualifying practice" means any physician practice that provides care, treatment or services to a patient who has been admitted to a qualifying hospital.

(c) "Care, treatment or services" means burn care or burn-related treatment, or services furnished by a qualifying hospital or qualifying practice.

(d) "Uncompensated traumatic burn care" means any portion of care, treatment or services rendered by a qualifying hospital or qualifying practice with respect to a patient whose burn care, treatment or services arose out of a single accident or occurrence for which the qualifying hospital or qualifying practice did not receive payment.

(2) Any person, firm, authority or corporation operating a qualifying hospital or qualifying practice providing traumatic burn care in this state shall have a lien for the reasonable charges for care, treatment or services of an injured person for uncompensated traumatic burn care, which lien shall be only upon any and all causes of action accruing to the person to whom the care was furnished or to the legal representative of the person on account of injuries that gave rise to the causes of action and that necessitated the care, treatment

or services, subject and subordinate, however, to any attorney's lien or fees. The lien provided for in this subsection is only a lien against those causes of action and shall not be a lien against the injured person, the legal representative, or any other property or assets of those persons and shall not be evidence of the person's failure to pay a debt. This subsection shall not be construed to interfere with the exemption from Sections 85-7-301 through 85-7-315 provided by Section 85-7-309, nor shall this subsection prohibit an injured person or his legal representative from negotiating with a qualifying hospital or practice.

SOURCES: Laws, 2013, ch. 512, § 1, eff from and after July 1, 2013.

Editor's Note — For repeal of this section see § 85-7-317.

§ 85-7-303. Filing of verified statement; contents; notice [Repealed effective July 1, 2016].

(1) In order to perfect the lien provided for in Section 85-7-301, the operator of the qualifying hospital or qualifying practice:

(a) Shall, not less than fifteen (15) days before the date of filing the statement required under paragraph (b) of this subsection, provide written notice to the patient and the legal representative of the patient, if applicable, and, to the best of the operator's knowledge, the persons, firms, corporations and their insurers claimed by the injured person or the legal representative of the injured person to be liable for damages arising from the injuries and shall include in the notice a statement that the lien is not a lien against the patient or any other property or assets of the patient and is not evidence of the patient's failure to pay a debt. The notice shall be sent to all those persons and entities by first-class and certified mail or statutory overnight delivery, return receipt requested; and

(b) Shall file in the office of the clerk of the chancery court of the county in which the qualifying hospital or qualifying practice is located and in the county in which the patient resides, if a resident of this state, a verified statement setting forth the name and address of the patient as it appears on the records of the qualifying hospital or qualifying practice; the name and location of the qualifying hospital or qualifying practice, and the name and address of the operator thereof; the dates of admission and discharge of the patient from the qualifying hospital, or with respect to a qualifying practice, the dates of treatment; the amount claimed to be due for the qualifying hospital or qualifying practice; and certification that the amount claimed is for treatment of uncompensated traumatic burn care, which statement must be filed within the following time period:

(i) If the statement is filed by a qualifying hospital, then the statement shall be filed within seventy-five (75) days after the person has been discharged from the facility; or

(ii) If the statement is filed by a qualifying practice, then the statement shall be filed within ninety (90) days after the person first sought treatment from the practice for the injury.

(2) The filing of the claim or lien shall be notice thereof to all persons, firms or corporations liable for the damages, whether or not they received the written notice provided for in this section. The failure to perfect the lien by timely complying with the notice and filing provisions of subsection (1) of this section shall invalidate the lien, except as to any person, firm, or corporation liable for the damages, which receives before the date of any release, covenant not to bring an action, or settlement, actual notice of a notice and filed statement made under subsection (1) of this section, via hand delivery, certified mail, return receipt requested, or statutory overnight delivery with confirmation of receipt.

SOURCES: Laws, 2013, ch. 512, § 2, eff from and after July 1, 2013.

Editor's Note — For repeal of this section see § 85-7-317.

§ 85-7-305. Duties of chancery clerk; lien book [Repealed effective July 1, 2016].

The clerk of the chancery court shall endorse the date and hour of filing on the statement filed under Section 85-7-303; and, at the expense of the county, the clerk shall provide a lien book with a proper index in which the clerk shall enter the date and hour of the filing; the names and addresses of the qualifying hospital or qualifying practice, the operators thereof, and the patient; and the amount claimed. The information shall be recorded in the name of the patient.

SOURCES: Laws, 2013, ch. 512, § 3, eff from and after July 1, 2013.

Editor's Note — For repeal of this section see § 85-7-317.

§ 85-7-307. Effect of covenant not to bring an action; action to enforce lien; affidavit of payment [Repealed effective July 1, 2016].

(1) No release of the cause or causes of action or of any judgment thereon or any covenant not to bring an action thereon shall be valid or effectual against the lien created by Section 85-7-301 unless the holder thereof is given notification of the results of the cause of action or executes a release of the lien; and the injured party (the "claimant") or an assignee of the lien holder may enforce the lien by an action against the person, firm or corporation liable for the damages or the person, firm or corporation's insurer. If the claimant prevails in the action and if the claimant's balance of the award is insufficient to cover the medical liens, the court may determine pro rata compensation in favor of the claimant. In no case shall the payment towards the liens exceed fifty percent (50%) of the claimant's balance. Any qualifying hospital or qualifying practice that receives payments under the authority of Sections 85-7-301 through 85-7-315, shall release the claimant from any further liens for the cost of hospital care, treatment or services provided for which the lien was placed. The action shall be begun against the person liable for the

damages or the person's insurer within one (1) year after the date the liability is finally determined by a settlement, by a release, by a covenant not to bring an action, or by the judgment of a court of competent jurisdiction.

(2) No release or covenant not to bring an action that is made before or after the patient was discharged from the qualifying hospital or qualifying practice shall be effective against the lien perfected in accordance with Section 85-7-303, if the lien is perfected before the date of the release, covenant not to bring an action, or settlement unless notification is given to the qualifying hospital or qualifying practice; however, any person, firm or corporation that consummates a settlement, release or covenant not to bring an action with the person to whom care, treatment or services were furnished and that first procures from the injured party an affidavit as prescribed in subsection (3) of this section shall not be bound or otherwise affected by the lien except as provided in subsection (3) of this section, regardless of when the settlement, release or covenant not to bring an action was consummated.

(3) The affidavit shall affirm:

(a) That all bills incurred for treatment for the injuries for which a settlement is made have been fully paid or resolved; and

(b) The county of residence of the affiant, if a resident of this state; however, the person taking the affidavit shall not be protected thereby where the affidavit alleges the county of the affiant's residence and the lien of the qualifying hospital or qualifying practice is at that time on file in the office of the chancery clerk and is recorded in the name of the patient as it appears in the affidavit.

SOURCES: Laws, 2013, ch. 512, § 4, eff from and after July 1, 2013.

Editor's Note — For repeal of this section see § 85-7-317.

§ 85-7-309. Applicability [Repealed effective July 1, 2016].

Sections 85-7-301 through 85-7-315 shall not apply to:

(a) A cause of action filed by a person who received care, treatment or services from a qualifying hospital or a qualifying practice whose medical costs were paid by the Centers for Medicare and Medicaid Services.

(b) Any monies becoming due under the Workers' Compensation Law.

SOURCES: Laws, 2013, ch. 512, § 5, eff from and after July 1, 2013.

Editor's Note — For repeal of this section see § 85-7-317.

§ 85-7-311. Effect of Sections 85-7-301 through 85-7-315 on settlement before entry into qualifying hospital [Repealed effective July 1, 2016].

No settlement or release entered into or executed before the entry of the injured party into the qualifying hospital shall be affected by or subject to the terms of Sections 85-7-301 through 85-7-315.

SOURCES: Laws, 2013, ch. 512, § 6, eff from and after July 1, 2013.

Editor's Note — For repeal of this section see § 85-7-317.

§ 85-7-313. No independent right of action to determine liability for injuries [Repealed effective July 1, 2016].

Sections 85-7-301 through 85-7-315 shall not be construed to give any qualifying hospital or qualifying practice an independent right of action to determine liability for injuries sustained by a person or firm.

SOURCES: Laws, 2013, ch. 512, § 7, eff from and after July 1, 2013.

Editor's Note — For repeal of this section see § 85-7-317.

§ 85-7-315. False affidavit required by Section 85-7-307 as perjury [Repealed effective July 1, 2016].

Any person who gives any false affidavit as provided by Section 85-7-307 commits the offense of perjury.

SOURCES: Laws, 2013, ch. 512, § 8, eff from and after July 1, 2013.

Editor's Note — For repeal of this section see § 85-7-317.

§ 85-7-317. Repeal of Sections 85-7-301 through 85-7-315.

Sections 85-7-301 through 85-7-315 shall stand repealed on July 1, 2016.

SOURCES: Laws, 2013, ch. 512, § 9, eff from and after July 1, 2013.

TITLE 87

CONTRACTS AND CONTRACTUAL RELATIONS

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CHAPTER 7

Improvements to Real Property

SEC.	
87-7-7.	Contractor negotiation of draft payable to contractor and other parties; written signed authorization of co-payees required; penalties.

§ 87-7-7. Contractor negotiation of draft payable to contractor and other parties; written signed authorization of co-payees required; penalties.

(1) A contractor who undertakes to negotiate a draft made payable to the contractor and any other party must first obtain an endorsement or other written signed authorization of every co-payee on the draft if the draft is tendered in payment for materials or equipment furnished or labor performed by the owner, laborer, supplier or equipment dealer.

(2) A contractor who negotiates a draft without first obtaining an endorsement or other written signed authorization required under this section is guilty of a misdemeanor and shall be subject to a fine not to exceed Five Hundred Dollars (\$500.00) per violation, and shall also be ordered by the court to make full restitution to the owner, laborer, supplier or equipment dealer who is entitled to payment from the proceeds of the draft, as well as reasonable attorney's fees incurred by any party to whom restitution is ordered.

SOURCES: Laws, 2012, ch. 506, § 1, eff from and after July 1, 2012.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

TITLE 89

REAL AND PERSONAL PROPERTY

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CHAPTER 1

Land and Conveyances

IN GENERAL

§ 89-1-7. Estate in two or more persons.

JUDICIAL DECISIONS

3. Joint tenancy.

Award of the entire purchase price of a home to one of the unmarried joint tenants (JT1) was appropriate. Joint tenants were allowed to seek partition of a property under Miss. Code Ann. § 11-21-3 partition, the chancellor could adjust the equities and determine the claims of the

joint tenants under Miss. Code Ann. § 11-21-9, and JT1 had paid the entire purchase price for the home along with the cost of all utilities, insurance, club dues, and taxes while JT2 had paid nothing. *Jones v. Graphia*, 95 So. 3d 751 (Miss. Ct. App. 2012).

§ 89-1-55. How lands sold under mortgages and deeds in trust.

Cross References — For additional notice requirements in mortgage foreclosure procedures that apply to mortgage broker licensees under Section 81-18-1 et seq., see § 81-18-55.

CHAPTER 5

Recording of Instruments

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ARTICLE 1.

GENERAL PROVISIONS.

SEC.	
89-5-3.	Conveyances, mortgages; void if not lodged for record.
89-5-8.	Affidavits relating to identification, marital status, heirship, etc. of party to instrument affecting real estate titles recordable; affidavit of scrivener's error recordable; admissibility.

§ 89-5-3. Conveyances, mortgages; void if not lodged for record.

Except as provided by Sections 89-5-101 through 89-5-113, all bargains and sales, and all other conveyances whatsoever of lands, whether made for

passing an estate of freehold or inheritance, or for a term of years; and all instruments of settlement upon marriage wherein land, money, or other personalty should be settled or covenanted to be left or paid at the death of the party, or otherwise; and all deeds of trust and mortgages whatsoever, shall be void as to all creditors and subsequent purchasers for a valuable consideration without notice, unless they be acknowledged or proved and lodged with the clerk of the chancery court of the proper county, to be recorded in the same manner that other conveyances are required to be acknowledged or proved and recorded. Failure to file such instrument with the clerk for record shall prevent any claim of priority by the holder of such instrument over any similar recorded instrument affecting the same property, to the end that with reference to all instruments which may be filed for record under this section, the priority thereof shall be governed by the priority in time of the filing of the several instruments, in the absence of actual notice. But as between the parties and their heirs, and as to all subsequent purchasers with notice or without valuable consideration, said instruments shall nevertheless be valid and binding.

SOURCES: Codes, Hutchinson's 1848, ch. 42, art. 1 (2), (3); 1857, ch. 36, arts. 20, 21; 1871, §§ 2303, 2306; 1880, §§ 1211, 1212; 1892, §§ 2456, 2457; 1906, §§ 2786, 2787; Hemingway's 1917, §§ 2290, 2291; 1930, §§ 2143, 2147; 1942, §§ 864, 868; Laws, 1924, ch. 239; Laws, 2011, ch. 364, § 10, eff from and after July 1, 2011.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the first sentence by substituting “wherein land, money, or other personalty should be settled...” for “wherein land, money, or other personality should be settled...”. The Joint Committee ratified the correction at its August 1, 2013, meeting.

JUDICIAL DECISIONS

4. Effect of failure to record or delay in recording.

Decedent's ex-wife was not entitled to execute a judgment against real estate formerly jointly owned by the decedent and his widow but conveyed by four deeds to the widow's sister, although the late-recorded deeds were void as to the ex-wife under Miss. Code Ann. § 89-5-3, because

under Miss. Code Ann. § 15-3-101(b)(iii) (Supp. 2010) the property was not subject to a claim against only one joint tenant, and any right the ex-wife had to execute her judgment on the jointly held property ceased to exist upon the decedent's death. *Kelly v. Roby* (In re Estate of Roby), 84 So. 3d 786 (Miss. Ct. App. June 28, 2011).

§ 89-5-8. Affidavits relating to identification, marital status, heirship, etc. of party to instrument affecting real estate titles recordable; affidavit of scrivener's error recordable; admissibility.

(1) Any affidavit relating to the identification, the marital status, the heirship, the relation, the death, or the time of death, of any person who is a party to any instrument affecting the title to real estate, or any affidavit

relating to the identification of any corporation or other legal entity which is a party to any instrument affecting the title to real estate, duly sworn to and acknowledged before any officer or person authorized to administer an oath under the laws of this state, shall be recordable in the land records in the office of the chancery clerk in the county where the real estate is situated.

(2)(a) Notice of a typographical or other minor error in an instrument affecting the title to real estate may be given by recording an affidavit of scrivener's error. If an affidavit is conspicuously identified as an affidavit of scrivener's error, the chancery clerk shall index the affidavit in the general index under the names of the original parties to the instrument if they are identified in the affidavit, and in the sectional index as provided in the indexing instructions of the affidavit. Notice of the corrective information provided by the affiant is effective upon recordation. An affidavit under this paragraph (a) may be prepared only by an attorney licensed to practice law in this state who prepared any instrument in the chain of title to the subject real estate.

(b) The affidavit of scrivener's error shall be sworn to and acknowledged before any officer or person authorized to administer an oath under the laws of this state, and shall be recordable in the land records in the office of the chancery clerk in the county where the real estate is situated.

(c) If requested, the chancery clerk shall make a marginal notation on the instrument to which the affidavit refers.

(3) Any affidavit so recorded, or a certified copy thereof, shall be admissible as evidence in any action involving the instrument to which it relates or the title to the real estate affected by the instrument and shall be prima facie evidence of the facts stated therein and the marketability of the title to real estate.

SOURCES: Laws, 2007, ch. 444, § 1; Laws, 2013, ch. 461, § 1, *eff from and after passage* (approved Mar. 25, 2013.)

Amendment Notes — The 2013 amendment added (2) and redesignated former (2) as (3).

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